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Attorneys for Defendant
Valley Gym Corp. (dba USA Fitness Center)

ELLIOT PERSHES, individually and on)	Case No. 2:18-cv-07258-ODW-RAO
behalf of all others similarly situated,)
)
Plaintiff,) DEFENDANT VALLEY GYM CORP.'S
) NOTICE OF CONSTITUTIONAL
) CHALLENGE TO A FEDERAL
vs.) STATUTE
)
USA FITNESS CENTER; DOES 1-10) DATE: November 26, 2018
Inclusive,) TIME: 1:30 P.M.
) PLACE: Courtroom 5d
) JUDGE: Hon. Otis D. Wright II
Defendants.)

1 Pursuant to Rule 5.1(a) of the Federal Rules of Civil Procedure, defendant
2 Valley Gym Corp. (“Defendant”), by and through its counsel, hereby provides notice
3 that its Motion to Dismiss plaintiff Elliott Pershes’s (“Plaintiff”) Complaint raises the
4 question of whether the First Amendment prohibits the application of the restrictions
5 in the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. (“TCPA”), to the
6 alleged text messages at issue in the case at hand, as well as whether the TCPA itself
7 is unconstitutional, because (1) it is a content- and speaker-based restriction on free
8 speech that cannot survive strict scrutiny, and (2) it is unconstitutionally vague and
9 overbroad.

10 Defendant further states that this Notice of Constitutional Question, as well as
11 Defendant’s Motion to Dismiss Plaintiff’s Complaint, will be served via certified mail
12 on the Attorney General of the United States concurrently with the filing of this
13 notice. The parties in this action do not include the United States, one of its agencies
14 or one of its officers or employees in an official capacity.

15
16 Dated: October 23, 2018

LOCKE LORD LLP

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18 By: /s/ F. Phillip Hosp
19 F. Phillip Hosp

20 Attorneys for Defendant
21 Valley Gym Corp. (dba USA Fitness
22 Center)
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CERTIFICATE OF SERVICE

On October 23, 2018, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all persons registered for ECF. All copies of documents required to be served by Fed. R. Civ. P. 5(a) and L.R. 5-1 have been so served. This notice and exhibit have also been sent via certified mail to the following:

Hon. Jeffrey B. Sessions
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

/s/ F. Phillip Hosp
F. Phillip Hosp

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